

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY) MDL NO. 1456
AVERAGE WHOLESALE PRICE)
LITIGATION) CIVIL ACTION: 01-CV-12257-PBS
)
) (Subcategory Docket: 06-11337)
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.,) Judge Patti B. Saris
No. 07-CV-11618-PBS) Magistrate Judge Marianne B. Bowler

**ABBOTT LABORATORIES, INC'S MOTION TO DISMISS
FOR LACK OF SUBJECT-MATTER JURISDICTION UNDER
THE FALSE CLAIMS ACT'S PUBLIC DISCLOSURE BAR**

Defendant Abbott Laboratories, Inc. ("Abbott") hereby respectfully asks, pursuant to Federal Rules of Civil Procedure 12(b)(1), that this Court dismiss the Relator's Complaint for lack of subject-matter jurisdiction, on the grounds that the Relator's allegations in the Complaint are based on public disclosures, and that relator Ven-A-Care of the Florida Keys, Inc. is not an original source of the information therein.

Specifically, Abbott asks the Court to find that:

- Ven-A-Care's allegations against Abbott were publicly disclosed before Ven-A-Care filed its original complaint against Abbott for the drugs at issue on February 15, 2001;
- As a corporation, Ven-A-Care is not an "original source;"
- Ven-A-Care has not met its burden of proving that it voluntarily provided the Government with its "direct and independent knowledge" prior to filing its qui tam lawsuit;
- Ven-A-Care has no direct and independent knowledge of the allegations in the Complaint.

WHEREFORE, Abbott asks that the Court grant this motion and relief as requested above and in the accompanying memorandum.

Dated: August 21, 2009

Respectfully submitted,

/s/ Tara A. Fumerton

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CERTIFICATE OF SERVICE

I, Tara A. Fumerton, an attorney, hereby certify that I caused a true and correct copy of the foregoing ABBOTT LABORATORIES, INC.'S MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION UNDER THE FALSE CLAIMS ACT'S PUBLIC DISCLOSURE BAR to be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 21st day of August, 2009.

/s/ Tara A. Fumerton

Tara A. Fumerton